

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

BRIAN LENNON,)	
)	
	Plaintiff,)
)	
v.)	
)	Case No.: 1:20-cv-1421
HOME DEPOT U.S.A., INC.)	
)	
	Defendant.)
)	
)	

NOTICE OF REMOVAL

NOW COMES the Defendant, HOME DEPOT U.S.A., INC., by and through its attorney, Eric C. Papier of McVEY & PARSKY, LLC, and in accordance with 28 U.S.C.A. 1332, 1441 and 1446, hereby provides notice of its removal of this cause for the following reasons:

1. On or about April 6, 2020, there was commenced and is now pending in the Superior Court of Hamilton County in Noblesville, Indiana, a certain civil action under Case No. 29D01-2004-CT-002846 in which Brian Lennon is the Plaintiff, and Home Depot U.S.A., Inc. is the Defendant. (See a copy of Complaint for Damages attached hereto as **Exhibit A** to Notice of Removal).

2. The aforementioned lawsuit is brought by Plaintiff seeking damages for injuries under a premises liability theory. Plaintiff's Complaint for Damages does not demand a specific amount in damages. Rather, Plaintiff's Complaint for Damages merely prays for judgment "in an amount commensurate with his injuries and damages."

3. Plaintiff Brian Lennon alleges that he was injured at the Home Depot store located at 9855 North Michigan Road in Carmel, Indiana on August 19, 2019 when he "fell on debris

hanging from a pallet” while he was “working on the job site.” As a result of the incident, Lennon alleges that he “sustained injuries including, but not limited to, his face, wrist and shoulder.”

4. As a result of his is injuries, Lennon alleges that he “has engaged the services of physicians and hospitals to treat such injuries, and hereby incurred medical expenses.” He also alleges “[a]dditional medical expenses will continue in the future as needed”, that he has lost wages and that his injuries “may be permanent in nature.”

5. Additionally, Home Depot’s investigation revealed that Lennon claims to have suffered injuries to his wrist that include a fracture to the triquetrum bone and tendon damage as a result of the incident at issue. He also may require rotator cuff surgery. As such, it appears that the amount in controversy will exceed \$75,000.

6. Defendant states that the above lawsuit involves a controversy with complete diversity of citizenship between citizens of different states, and Defendant affirmatively states further:

- (a) Upon information and belief, Plaintiff was at the commencement of this action, and is now, a citizen of the State of Indiana, and is a resident of the State of Indiana, and is not a citizen of the State of Delaware or the State of Georgia.
- (b) Defendant, HOME DEPOT U.S.A., INC., is a corporation duly created and organized by and under the laws of the State of Delaware with its principal place of business in the State of Georgia, and was not and is not a corporation created or organized under the laws of the State of Indiana, nor does it have its principal place of business in the State of Indiana.

7. This matter involves a controversy between an individual who is a citizen of the State of Indiana and a corporation incorporated and organized pursuant to the laws of a State other than Indiana, and who has its respective principal place of business in a State other than Indiana. Further, the amount in controversy, exclusive of interest and costs, satisfies the jurisdictional

amount requirement. Accordingly, the District Court for the United States has original jurisdiction over this lawsuit.

8. This Notice of Removal is timely filed within thirty (30) days of service, which was April 16, 2020, and within thirty (30) days of learning that more than \$75,000 is at issue in this case.

9. Attached hereto, and made a part hereof, are copies of the following documents filed by the parties and forwarded by the Defendant for filing in the Superior Court of Hamilton County, Indiana under Case No. 29D01-2004-CT-002846:

- Plaintiff's Summons and Complaint for Damages (See **Ex. A**);
- Plaintiff's Appearance;
- Defendant's Appearance; and
- Defendant's Answer and Affirmative Defenses to Complaint and Jury Demand (See documents attached hereto as **Exhibit B** to Notice of Removal (State Court Record (Plaintiff's Appearance, Summons and Complaint, Plaintiff's Motion for Jury Trial, the Court's April 30, 2020 Order, Defendant's Appearance, Defendant's Answer and Affirmative Defenses to Complaint and Jury Demand and the Court's May 12, 2020 Order))).

To the Defendant's knowledge, no other documents, or pleadings were filed in said lawsuit.

10. Notice of the filing of this Removal has been given to all parties as required by law. A true and correct copy of this Removal has been filed with the Clerk of the Hamilton County Superior Court. (See copy of Notice of Filing of Notice of Filing attached hereto as **Exhibit C** to Notice of Removal).

11. Defendant on removal demands this case be tried by a jury.

WHEREFORE, Defendant, HOME DEPOT U.S.A., INC., prays that it may affect removal of the within action from the Superior Court of Hamilton County, Indiana, to the United States District Court for the Southern District of Indiana – Indianapolis Division, and that the matter be tried before a jury.

Respectfully submitted,

HOME DEPOT U.S.A., INC.

By: /s/ Eric C. Papier
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 16, 2020, I electronically filed the foregoing with the Clerk of the Court using CM/ECF. I also certify that the foregoing is being served this day on all counsel of record identified below via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronic Notice of Electronic Filing:

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By: /s/ Eric C. Papier